



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 9969185

Date: FEB. 26, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an aerospace engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a laboratory assistant at the [redacted] Technology [redacted].⁵ His responsibilities included "conducting scientific research to develop new technologies for aerospace applications and other transportation energy systems, writing papers and technical reports, and setting up and operating the laser picture acquisition system for the wind tunnel facility." In response to the Director's request for evidence, the Petitioner provided an October 2019 letter from [redacted] University indicating that he "was offered and accepted a position as a postdoctoral research associate in the Department of Mechanical & Aerospace Engineering at [redacted] University." This letter further stated that he "is responsible for conducting research and writing papers and technical reports for a U.S. Navy research project supporting the development of high-performance [redacted] devices for deployment as [redacted]."⁶

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends "to continue his research on aerodynamic and automatic [redacted] related to aerospace and other transportation systems." He explained that his proposed research is aimed at "improving fluid dynamic performance in developing automatic [redacted] systems, which are vital for advanced aircraft and maritime applications' performance. The fluid dynamic performance is the determinate of aircraft and maritime applications' performance, including maximum speed, maneuverability, and range." The Petitioner further stated that his research plans involve understanding [redacted] and developing mathematical lift estimation models [redacted].

In his decision denying the petition, the Director determined that the Petitioner had not demonstrated the national importance of his proposed endeavor. The Director stated that the Petitioner had not shown that the potential prospective impact of his proposed endeavor "has national or global implications" within the field.

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Mechanical and Aerospace Engineering from [redacted] in August 2018.

⁵ The Petitioner previously served as a research assistant at [redacted] from October 2012 until August 2017.

⁶ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his research positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

To satisfy the national importance requirement, the Petitioner must demonstrate the “potential prospective impact” of his work. As evidence that the benefit of his proposed research has broader implications in the field, the Petitioner submitted letters from various aerospace engineering professors discussing the military and commercial benefits associated with his research aimed at developing accurate aerodynamic models. In addition, he presented information about helicopter rotor aerodynamics, aerodynamic force modeling, the U.S. military’s development of [REDACTED], and U.S. military spending relating to ships and planes. The Petitioner also provided reports discussing the U.S. Department of Defense’s [REDACTED] spending and plans for future [REDACTED] aircraft systems, and a funding announcement from the Defense Advanced Research Projects Agency relating to [REDACTED].⁷ Furthermore, the Petitioner has submitted documentation indicating that the benefit of his proposed research has broader implications for the field, as the results are disseminated to others in the field through scientific journals and conferences. As the Petitioner has demonstrated both the substantial merit and national importance of his proposed research, we conclude that he meets the first prong of the *Dhanasar* framework and withdraw the Director’s determination on this issue.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published and presented work, peer review activity, and participation in projects funded by the U.S. Office of Naval Research (ONR) and U.S. Air Force Office of Scientific Research (AFOSR). The Petitioner also offered evidence of articles that cited to his published work, and letters of support discussing his graduate work under the guidance of [REDACTED] his Ph.D. advisor at [REDACTED].

The Petitioner contends on appeal that his education, research experience in aerospace engineering, published articles, recommendation letters from others in the field, and research funding from ONR and AFOSR demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director’s determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*’s second prong.

In letters supporting the petition, several references discussed the Petitioner’s graduate research projects at [REDACTED]. For example, regarding the Petitioner’s work involving [REDACTED] technology, [REDACTED] stated that the Petitioner “developed a novel approach to using [REDACTED] technology for [REDACTED].” [REDACTED] further asserted that “[t]his [REDACTED] system will enhance the performance of military aircraft, as well as make both the military and commercial flight safer by automatic [REDACTED] on aircraft when they are traveling through [REDACTED].” While [REDACTED] indicated that the Petitioner’s [REDACTED] system was “demonstrated by our wind tunnel experiment,” he did not provide specific examples indicating that this system has been utilized in military or civilian aircraft, or otherwise constitutes a record of success in the field.

⁷ While we discuss a sampling of these letters, we have reviewed and considered each one.

With respect to the Petitioner's research relating to the [redacted] of airfoils, [redacted], assistant professor at [redacted] University, stated that the Petitioner investigated and quantified "the differences between a [redacted], [redacted] noted that the Petitioner determined "that the [redacted] constituents contributed to its total lift and drag" and that such research is useful for testing future aircraft designs. Likewise, [redacted], associate professor at [redacted] University, indicated that the Petitioner found that "aerodynamic [redacted] can be studied in a [redacted] the test airfoil" and that "for larger [redacted], the measured lift history differed greatly from the predictions provided by [redacted]'s formula." [redacted] further asserted that the Petitioner's work provided "researchers with a viable method of testing airfoils," but he and [redacted] did not offer examples of how the Petitioner's airfoil testing methodology has been implemented, utilized, or applauded in the aerospace industry.

In addition, [redacted] an aerospace research engineer with the U.S. Air Force Research Laboratory at Wright-Patterson Air Force Base, indicated that he has "collaborated with the petitioner to apply his [redacted] technique to the study and development of [redacted] airfoils."⁸ [redacted] asserted that the Petitioner has "developed a [redacted] that used sophisticated, nonlinear mathematical tools to predict how aircraft respond to [redacted]" and that this "work is valuable to my own applications within the U.S. Air Force Research Laboratory and to the academic community at large." [redacted] did not provide specific examples indicating that the Petitioner's [redacted] has affected the aerospace industry, has served as an impetus for progress or generated positive discourse in his field, or otherwise represents a record of success or progress rendering him well positioned to advance his proposed endeavor.

Furthermore, [redacted] assistant professor at University [redacted] asserted that the Petitioner's work has "been acknowledged by his peers in aerospace engineering. . . . As a specific example, [redacted], in their 2017 article for the *Annual Review of Fluid Mechanics*, made special note of the importance of [the Petitioner's] work for [redacted] research worldwide."⁹ [redacted]'s paper, however, does not distinguish or highlight the Petitioner's work from the more than 120 other articles they cited in their paper.

The record includes additional examples of articles which cited to the Petitioner's work.¹⁰ For instance, he presented an article, entitled [redacted] (2017 *American Institute of Aeronautics and Astronautics Aerospace Sciences Meeting*), in which the authors cited to the Petitioner and [redacted] paper in *Experiments in Fluids* as one of two examples that "extended upon" the [redacted] model.

⁸ The record indicates that [redacted], the Petitioner, [redacted] and two others coauthored a paper, entitled "[redacted]" [redacted] The Petitioner's Google Scholar citation information indicates that this paper has received four citations since its publication in 2017.

⁹ The record includes a copy of [redacted]'s paper, entitled [redacted] which cited to the Petitioner and [redacted]'s work. With regard to [redacted] paper states: [redacted]

[redacted] (Goman & Khrabrov 1994) [redacted] (Goman & Khrabrov 1994), [redacted] (Williams et al. 2015), [redacted] (Luchtenburg et al. 2015)."

¹⁰ Although we discuss representative sample articles here, we have reviewed and considered each one.

While the authors briefly referenced the Petitioner's work, their article does not differentiate his paper from the 27 other papers they cited. Another article offered by the Petitioner, entitled [REDACTED]

[REDACTED] (2017 American Institute of Aeronautics and Astronautics Applied Aerodynamics Conference), also cites to the Petitioner and [REDACTED]'s paper in *Experiments in Fluids*, stating:

[REDACTED]" Again, the article's author does not distinguish the Petitioner's paper from the 22 other papers he referenced.

Regarding the Petitioner's overall citation record, [REDACTED] asserted that the Petitioner's work has "been cited over 30 times, which is a high number in the engineering disciplines." As it relates to the citation of the Petitioner's work, the record includes January 2019 information from Google Scholar indicating that his three highest cited articles, entitled [REDACTED]

[REDACTED], [REDACTED] and [REDACTED] each received 17, 10, and 8 citations, respectively.

The Petitioner did not specify how many citations for each of these individual articles were self-citations by him or his coauthors.

Furthermore, the Petitioner provided data from Clarivate Analytics regarding baseline citation rates and percentiles by year of publication for various research fields, including "Engineering," "Physics," and "Space Science." The Petitioner claimed that his paper coauthored with [REDACTED] and three others, entitled [REDACTED] ranked among "the top 10% most-cited articles published in Engineering in 2015" based on the number of citations it has received (17) since that time. The Petitioner did not indicate whether he factored in any self-citations in determining this percentile ranking. Nor has he sufficiently explained his choice of the field of "Engineering," as opposed to "Physics" or "Space Science," as the basis for comparison. In addition, the Clarivate Analytics citation data is dated February 2018, and therefore does not capture citations that occurred after early 2018, while the Petitioner's Google Scholar citation report is from January 2019.¹¹ Because the Clarivate Analytics data is not contemporaneous with the Petitioner's Google Scholar data, he has not shown that the former provides a proper analysis of his citation record. Moreover, the documentation from Clarivate Analytics states that "[c]itation frequency is highly skewed, with many infrequently cited papers and relatively few highly cited papers. Consequently, citation rates should not be interpreted as representing the central tendency of the distribution." Here, the Petitioner has not demonstrated that the number of citations received by his published articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong.

Additionally, as it relates to the Petitioner's education, while his Ph.D. from [REDACTED] renders him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. In *Dhanasar*, the record established that the petitioner held multiple graduate degrees including "two

¹¹ A webpage accompanying the Clarivate Analytics information states that its citation "data is updated six times a year" (every two months).

master of science degrees, in mechanical engineering and applied physics, as well as a Ph.D. in engineering.” *Id.* at 891. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding his peer review activity, the Petitioner provided emails thanking him for reviewing one manuscript submitted to *Journal of Flow Control, Measurement & Visualization* and two manuscripts submitted to *International Journal of Acoustics*. The Petitioner, however, has not documented the stature of the aforementioned journals, nor offered other evidence demonstrating that his occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The Petitioner also asserted that he has received “funding from major government research agencies, including ONR and AFOSR.” He presented five research papers that he coauthored with [REDACTED] and others in which the “Acknowledgements” section noted that their work was supported by ONR and AFOSR. These articles, however, do not identify who among their authors was primarily responsible for securing the funding for the research projects. In *Dhanasar*, the record established that the petitioner “initiated” or was “the primary award contact on several funded grant proposals” and that he was “the only listed researcher on many of the grants.” *Id.* at 893, n.11. Here, the record does not show that the Petitioner (rather than [REDACTED]) was mainly responsible for obtaining funding for their research projects.

The record demonstrates that the Petitioner has conducted, published, and presented research during his graduate studies at [REDACTED] but he has not shown that this work renders him well positioned to advance his proposed aerospace engineering research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual’s progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published and presented work has served as an impetus for progress in the aerospace engineering field or that it has generated substantial positive discourse in the aerospace industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to [REDACTED] performance. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver’s Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to the impracticality of labor certification, his expertise in the field, and the importance of his research. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required

by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.